# YALE LAW JOURNAL

SUBSCRIPTION PRICE, $2.50 A YEAR SINGLE COPIES, 35 CENTS



Published monthly during the Academic year, by students of the Yale Law School.
P. O. Address, Box 1341, New Haven, Conn.

If a subscriber wishes his copy of the JOURNAL discontinued at the expiration of his subscription, notice to that effect should be sent; otherwise it is assumed that a continuance of the subscription is desired.

CONCERNING no subject will the efforts of the American Bar Association to secure uniform legislation be more greatly appreciated than in regard to that of divorce. Generally, the *raison d'etre* of uniformity in legislation is the business interests of the different States, but, in the case of divorce something more than the commercial welfare of the country is at stake. It is on grounds of common morality as well as of expediency, that the granting of divorces ought, of all things, to be governed by uniform laws; and the legislation recommended by the uniform-law commission of the American Bar Association should be adopted by every State whose laws are not equally adapted to the necessity for stringent and efficient rules.

It is scandalous that such diversity of legislation should be permitted to control the annulment of so sacred a contract as that of marriage. Relative to their importance, other contracts are governed by much more rigid rules; but, however rigid the laws of Massachusetts, the persistent seeker of divorce may feel sure of obtaining his object by an appeal to the courts of Oklahoma. Thus laxity of law in one State renders ineffectual the laws of all other States.

Not only with regard to the immediate parties in divorce proceedings is the present lack of uniformity a disgrace, but also for the numerous following of unscrupulous lawyers whom it furnishes with employment. Laxity of the law here opens the door to all kinds of trickery and encourages practices that are a discredit to the profession, while aiding unprincipled men and women in what is no less than bigamy.

THE important provisions of the legislation recommended by the American Bar Association are that all applications for divorce must be by bill or petition; that the plaintiff must have resided in the State two years before beginning the action; that the defendant must be personally served in the action, unless it shall appear that the defendant cannot be found, in which case notice may be given by publication; that each divorce case shall be heard in open court, and in no case of default shall a divorce be granted, unless the judge is satisfied that all proper means have been taken to notify the defendant and unless the cause of divorce has been fully proved by reliable witnesses. Another provision is for the punishment of any person who shall advertise in any way to secure or assist in securing a divorce.

The practices at which these provisions are aimed will suggest themselves; the necessity for the consideration of the proposed legislation by those States which are the offenders is equally obvious.

* * *

FAITH in expert testimony has recently been much shaken by the outcome of the Luetgert trial in Chicago. In this criminal inquiry, as in that of Marie Barbeeri in New York, have been demonstrated the dangerous possibilities of the miscarriage of justice arising from the American system under which expert opinion is permitted to be introduced in the courts.

Scientists are not infallible and it would be unreasonable to expect them always to agree, but, where each side in a criminal cause may employ, if it can, scientific opinion to support its view, and where an inquiry is reduced practically to a debate between hired experts, there is considerable opportunity for perjury, and disagreement of the experts is likely to result with consequent clouding of the issue and perplexity of the jury.

Whether they do things better in France and Germany, where the introduction of expert evidence is under different rules, we are not prepared to say; we speak only of the frequent failure of our own system. In these foreign countries expert testimony is confined to a permanent commission appointed by the Government, paid by the year, called on by the judge, and making their report independent of either side. The advantages of such a system are that the expert opinion is more likely to be scientific, impersonal and impartial. For the Government to choose and pay all the experts rather than to have them in the employ of the interested parties seems more likely to result in justice, though, on the other hand, doubt has been expressed

whether the introduction of the Continental system would not trench upon the "rights and liberties of the individual to meet a public indictment." However we may differ as to the remedy, the need of a remedy remains; it is plain that the present system results too often in a clear obstruction of justice.

* * *

ELECTION to the board of editors of the JOURNAL will this year be decided largely on the basis of a thesis competition, the decision being governed somewhat also by the quality of the class-room work of the competitors. The thesis subjects which follow have been chosen with a view to the presumable qualifications of the average members of the Junior and Middle classes, and the editors hope that many members of both classes may be interested in entering the competition. The subjects are:

"The demerits of the Olney-Pauncefote Arbitration Treaty."

"In what light can stock certificates be deemed quasi-negotiable?"

"Can the American official law reports be advantageously noticed in bulk?"

"Should the ordinary course in American colleges for the degree of B.A. be shortened to three years?"

"The influence of the Penn charter on the institutions of Pennsylvania, now existing."

"The one man power in modern city charters."

Any one of the above subjects may be selected . The theses should be about four thousand words in length, and should be handed in on or before March first, 1898, being marked with an assumed name or device, and the true name of the author being enclosed in a sealed envelope marked with such assumed name or device. To the author of the most meritorious thesis a prize of twenty-five dollars ($25) will be awarded.